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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Summary record of the 4th meeting
Held at Headquarters, New York, on Wednesday, 4 June 2003, at 10 a.m.

Chairman: Mr. Huntley ..... (Saint Lucia)

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03-38280 (E)

The meeting was called to order at 10.30 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Requests for hearings (aide-mémoire 11/03)

2. **The Chairman** drew attention to the agenda item entitled "Special Committee decision of 10 June 2002 concerning Puerto Rico". He recalled that the Special Committee had had an annual discussion of the item, including hearings of interested organizations. The Committee had received 16 requests for hearings. He suggested that the petitioners should be heard in accordance with the Committee's usual practice.

3. *It was so decided.*

4. **The Chairman** drew attention to aide-mémoire 11/03, which contained a number of requests for hearings on the item concerned. If he heard no objection, he would take it that the Committee acceded to those requests.

5. *It was so decided.*

Question of Gibraltar (A/AC.109/2003/3)

6. **The Chairman** informed the Committee that the delegation of Spain had indicated its wish to participate in the Committee's consideration of the item. If he heard no objection, he would take it that the Committee acceded to that request.

7. *At the invitation of the Chairman, Mr. Oyarzún (Spain) took a place at the Committee table.*

8. **Mr. Oyarzún** (Spain) said that Gibraltar was a decolonization case in which there was a dispute over sovereignty between the United Kingdom of Great Britain and Northern Ireland, as the administering Power, and Spain. Spain would never renounce its claim to sovereignty, which extended not only to the Rock of Gibraltar, which had been transferred to the United Kingdom under article 10 of the Treaty of Utrecht, but also to the Isthmus, which was occupied by the United Kingdom. In view of the fact that there was a dispute over sovereignty, the question of Gibraltar was given specific and different treatment in the context of the United Nations, as had been recognized by the Special Committee many years earlier.

9. Every year the General Assembly adopted a decision by consensus on the subject of Gibraltar, in which it recalled previous decisions, as well as the joint statement agreed to by the Governments of Spain and the United Kingdom on 27 November 1984. In the text of the decision, the General Assembly stipulated, inter alia, the establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar, and that the issues of sovereignty would be discussed in that process. In that connection, he wished to underline that the Government of Spain was complying scrupulously with the decision of the General Assembly, with encouraging results.

10. The Ministers for Foreign Affairs of Spain and the United Kingdom had had several meetings and conversations with the aim of concluding a general agreement covering all the important topics, including those of sovereignty and cooperation, with the shared objective of offering a secure, stable and prosperous future for Gibraltar. That was a live process which was continuing.

11. Relations between Spain and the United Kingdom were currently going through one of their best moments in recent history. In that context, Spain was willing to reach a global agreement with the United Kingdom which would assure the Gibraltarian people the highest possible level of self-government to satisfy the interests and aspirations of the Territory. Spain considered that Gibraltar should fully benefit from the opportunities opening up before it in the new Europe, with the ultimate objective of overcoming the historic anomalies of the past.

12. Referring to the public consultation which had taken place in Gibraltar in 2002, he said it had been carried out contrary to the aforementioned decision of the General Assembly, which had left the solution of the question of Gibraltar in the hands of the United Kingdom and Spain. The results of the consultation were therefore invalid and had no legal effect since they contradicted the spirit and letter of the principle of self-determination.

13. In paragraph 6 of resolution 1514 (XV) of 14 December 1960, the General Assembly had stated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations". The question of Gibraltar had to be considered from that perspective, taking into account, naturally, the provisions of the Treaty of Utrecht.

14. It should not be concluded from the above that the Government of Spain wished to reach an agreement over Gibraltar behind the backs of the Gibraltarian people. On the contrary. Both the Government of Spain and the Government of the United Kingdom had, on a number of occasions, invited the Chief Minister of Gibraltar to take part in ministerial meetings under the Brussels Process, and at the latest such meeting he had been offered an opportunity to take part in accordance with the formula "two flags, three voices". On behalf of his Government, he expressed regret that the Chief Minister had declined to accept those invitations and that no representative of Gibraltar had participated in the Seminar on decolonization held recently in Anguilla. That seminar had led to a better understanding of the special features of the various concepts of decolonization and of the specific legal characteristics of each individual situation. Spain had actively participated in the Seminar, one of the conclusions of which had been that each of the 16 Non-Self-Governing Territories remaining on the list was unique and that there could be no single solution to all decolonization questions.

15. In conclusion, he said that the negotiations between Spain and the United Kingdom over Gibraltar had received enthusiastic support from the European Union, which had once again reaffirmed that both countries were faithfully complying with the obligations arising from the decisions of the General Assembly.

Hearing of representatives of Non-Self-Governing Territories

16. **The Chairman** drew attention to the working paper prepared by the Secretariat (A/AC.109/2003/3). He also informed the Committee that he had received a communication from the Chief Minister of Gibraltar requesting an opportunity to address the Committee on the question of Gibraltar. He said that, if he heard no objection, he would take it that the Committee wished to accede to that request in accordance with its usual procedure. Since the Chief Minister himself was unable to be present, his deputy would speak on his behalf.

17. *It was so decided.*

18. **Mr. Azopardi** (Government of Gibraltar), noting the success of the Caribbean Regional Seminar organized by the Special Committee on the question of the development of the decolonization process, expressed the hope that future regional seminars would revert to the previous format, otherwise Territories such as Gibraltar that were neither in the Caribbean nor in the Pacific would be without a forum in which they could participate in a way that would enable them to focus meaningfully on their problems. However, in the absence at the Seminar of representatives of Gibraltar, representatives of other United Kingdom Non-Self-Governing Territories had spoken in defence of the rights of Gibraltarians to self-determination and had been critical of the assertion by the representative of Spain that the Government of his country would not allow representatives of the Special Committee on Decolonization to visit Gibraltar.

19. The representative of Spain had described such a possible visit as an "interference". It was incomprehensible that a visit by members of the Special Committee to a Territory on the list of Non-Self-Governing Territories could be an interference. The only party interfering in the work of the Special Committee was Spain. Of course, the real reason why Spain did not want members of the Special Committee to visit Gibraltar was that it did not want to give it an opportunity to learn about the real state of affairs in Gibraltar and the lives of its people. Spain's position and the arguments deployed by Spain in the United Nations bore no relationship to the truth. If the members of the Special Committee were to come to Gibraltar, Spain's fabrications would be refuted.

20. He once again, on behalf of the Government and people of Gibraltar, issued a pressing invitation to the members of the Special Committee to visit Gibraltar. Given that the United Kingdom had allowed the Caribbean Seminar to be held in a Non-Self-Governing Territory, namely Anguilla, and given also that at that Seminar the representative of the United Kingdom had stated that his country would agree to such visits if invitations were issued by the territorial authorities, the United Kingdom could not have any objection. If the United Nations could not provide funding for the visit, the Government of Gibraltar would do so, and, if the United Nations did not wish to accept funding from the Government of Gibraltar, the money could be raised from the people of Gibraltar in a street collection in the space of just one hour.

21. Year after year representatives of the Government of Gibraltar outlined their position at the United Nations, but to no practical effect. Every year the same ineffective resolution was adopted. The frustration of the Gibraltarians was explained by the fact that the agreed position of the United Kingdom and Spain and

the weight of those States in the United Nations stood in the way of the objective consideration of the question of Gibraltar by the Special Committee. The Gibraltarians could not secure agreement allowing them to seek an advisory opinion from the International Court of Justice since, in spite of their insistence, Spain (and probably also the United Kingdom) refused to submit the appropriate request. The United Nations was being systematically misled about the factual reality of Gibraltar. In that connection, he urged the Special Committee to convene a seminar or establish a working group specifically to consider the question of Gibraltar.

22. The whole of Spain's case, on the basis of which it denied the people of Gibraltar their inalienable right to self-determination, was based on its assertion that, under United Nations doctrine, Gibraltar must be decolonized not on the basis of the principle of self-determination but in accordance with the principle of territorial integrity. That was a wholly spurious argument. Under United Nations doctrine, decolonization could not be achieved by the application of the principle of territorial integrity. The Organization itself had acknowledged that when it had stated that in the process of decolonization there was no alternative to the principle of self-determination. As was perfectly clear from the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970), the principle of territorial integrity (which was used to prevent the use of the principle of self-determination to break up States through secession) was not applicable in the case of the decolonization of Gibraltar. The aforementioned resolution established, in detail and specifically, the interaction between the principles of self-determination and territorial integrity. In order that the principle of territorial integrity should have primacy over the principle of self-determination, the State objecting against the application of the principle of self-determination must be "possessed of a government representing the whole people belonging to the territory". Spain was not possessed of such a Government. Gibraltar had its own Government, and the functions that it did not exercise as a consequence of limited self-government were exercised by the Government of the administering Power — the United Kingdom. Spain could therefore not properly invoke the principle of territorial integrity.

23. The Government of Gibraltar, with the support of many groups in Gibraltar, had organized and conducted a massive political campaign at the international level aimed at focusing attention on the difficult plight of the Gibraltarians. As a result, the Government of Gibraltar had been able to secure massive support in the media of the United Kingdom, from British trade unions and business organizations, in the United Kingdom Parliament and among the public at large in the United Kingdom. The campaign had culminated in the publication by the House of Commons Foreign Affairs Committee of a report containing an indictment of the United Kingdom Government for its actions and policies relating to Gibraltar. The Government of Gibraltar had also managed to secure wide support for its efforts at the international level.

24. Despite that, on 12 July 2002 the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom had made a formal statement to Parliament in which he had stated that the United Kingdom and Spain had reached broad agreement on many of the principles that should underpin a lasting settlement of the question of Gibraltar, and specifically on the principle of the joint sovereignty of the United Kingdom and Spain over Gibraltar.

25. As a direct response to that statement, the Government of Gibraltar had organized its own referendum. The campaign, the registration process, the voting and the counting of votes had all been observed by a team of eminent international observers. In the referendum the population had been asked whether it approved of the principle that the United Kingdom and Spain should exercise joint sovereignty over Gibraltar. Of the 20,675 registered voters, 18,176 had actually voted, representing a turnout of 88 per cent of the electorate. Of those, 187 (1.03 per cent of the valid votes cast) had voted "yes", and 17,900 (98.97 per cent of the valid votes cast) had voted against the principle.

26. For reasons best known to itself, Spain had described the referendum as "illegal". The referendum fully accorded with the laws of Gibraltar. The United Kingdom had called the referendum a premature local initiative and an "eccentric waste of money". On 7 November 2002, the Foreign Affairs Committee of the United Kingdom Parliament had condemned the position of the United Kingdom Government and had published a long and comprehensive report on Gibraltar in which it had recommended that the United Kingdom Government should take full account of the

views expressed in the referendum by the people of Gibraltar. Moreover, at a meeting of the Fourth Committee held on 4 October 2002, the representative of the United Kingdom had stated that the principle of Gibraltarian consent and an eventual referendum were central to the United Kingdom Government's approach and that the people of Gibraltar must decide by referendum on the acceptability of any eventual comprehensive package of proposals. Such a limited application of the right of consent was not the same as the right of Gibraltarians to determine their own future. The real intention of the United Kingdom and Spain was to conclude an agreement, or a declaration of principles, in which the United Kingdom would share sovereignty over Gibraltar with Spain. At that point, the right of Gibraltarians to self-determination would be betrayed, undermined and effectively denied for all time.

27. The Government of Gibraltar considered that full respect for the political and democratic rights of the people of Gibraltar to decide their own future required the United Kingdom to desist from entering into a political agreement with Spain against the wishes of the Gibraltarians, regardless of whether such an agreement could be implemented in practice without the consent of the Gibraltarians. Despite the fact that the people of Gibraltar had stated their position decisively in the referendum, the Government of the United Kingdom continued to declare that its position remained as set out in the 12 July 2002 statement (adherence to the agreement on the principle of joint sovereignty and an intention to continue to seek ways of reaching broad agreement based on that principle).

28. He once again urged the Special Committee to stop calling for the United Kingdom and Spain to conduct bilateral negotiations to try to settle their differences over Gibraltar. The form of words "their differences" did not take account of the political rights and aspirations of the people of Gibraltar. The Special Committee should ensure that there was a proper interpretation of its mandate with regard to decolonization, namely, that the only principle applicable to decolonization was self-determination. Accordingly, unless the Special Committee saw its mandate as that of a referee in a dispute over sovereignty between the United Kingdom and Spain, it must in its decisions and statements on Gibraltar explicitly recognize the rights and aspirations of its people. Unfortunately, the Special Committee itself might be encouraging the view that sovereignty disputes overrode and negated the right to self-determination. Thus, in the conclusions of seminars it was regularly stated that the Special Committee should implement its programme of work only in cases where there were no pending sovereignty disputes. That and other conclusions did not reflect the position of the Non-Self-Governing Territories and experts participating in the seminars, and had been included under extreme political pressure from Spain and Argentina.

29. The Gibraltarians would not surrender and allow their political rights and aspirations to be trampled on. Like all other United Kingdom Non-Self-Governing Territories, the Gibraltarians were planning to proceed with a process of constitutional reform and modernization that would take them to a level of self-government that would justify the removal of Gibraltar from the list of Non-Self-Governing Territories. It was extremely important, however, that no Territory should be removed from the list without an act of self-determination by its people, namely a referendum. The people of Gibraltar hoped that the Special Committee would help them to achieve their aspirations.

30. **Mr. Ovia** (Papua New Guinea) asked the representative of Gibraltar whether the Gibraltarians had really declined to participate in the Brussels Process.

31. **Mr. Azopardi** (Government of Gibraltar) said that, although it had been proposed that the Government of Gibraltar should participate in the Brussels Process of negotiations towards the settlement of the question of Gibraltar, it would have had the role of an observer in a bilateral process; Gibraltar could participate in that process only on an equal footing with the United Kingdom and Spain, if it became trilateral. Gibraltar had therefore considered the proposal to be insincere, especially as the United Kingdom and Spain had reserved for themselves the right to decide Gibraltar's fate in spite of the objections of its population. Gibraltar was prepared to enter into a dialogue with Spain that would be genuine, constructive and open.

32. **Mr. Ovia** (Papua New Guinea) said that the Special Committee should study the question of such a possibility in the course of its future work.

33. **Mr. Requeijo Gual** (Cuba) pointed out that it was not because the Caribbean Seminar in Anguilla had been devoted to Caribbean problems that Gibraltar had not taken part; representatives from a number of countries not connected with the region had

participated. Moreover, contrary to the assertion by the representative of the Government of Gibraltar, no pressure had been exerted on anyone while the drafting committee of the Seminar had been preparing the report. The report had incorporated only information that had been discussed during the Seminar.

34. **The Chairman** asked the representative of Gibraltar how pointedly the question of Gibraltar's future had figured in the 2000 elections in the Territory and whether the issue had been reflected in the candidates' election campaigns.

35. **Mr. Azopardi** (Government of Gibraltar), replying to the Chairman's question, said that Gibraltar's electorate unanimously supported the Government's basic position: the right to self-determination without interference from Spain. There was also no disagreement between the Government and the Opposition on that issue or on the question of holding a referendum. For that reason foreign policy issues had been less acute in recent elections than in earlier periods. As for the explanation given by the representative of Cuba, he said he would like to make it clear that it was merely an impression that the representatives of Gibraltar had had.

36. **The Chairman** asked whether the question of the principles of self-determination had figured in the Opposition and Government campaigns at the latest elections.

37. **Mr. Azopardi** (Government of Gibraltar) said that all the political parties were in agreement on the principle of self-determination.

38. **The Chairman** asked whether the legality of the elections in Gibraltar had been placed in doubt.

39. **Mr. Azopardi** (Government of Gibraltar) said that the recent elections in Gibraltar had been conducted in full compliance with constitutional law and, as far as he was aware, no doubts had been expressed regarding their legality.

40. **Ms. Mulamula** (United Republic of Tanzania) said that there had clearly not been enough representatives of Gibraltar at the Caribbean Seminar in Anguilla and that in future they must take part in such seminars. In particular, that would help the Government of Gibraltar to inform the population about the other possible decolonization options envisaged in United Nations doctrine.

41. **Mr. Azopardi** (Government of Gibraltar) replied that the population was aware of all the possible options for decolonization and that an information campaign on the subject had been conducted before the referendum. Moreover, public consultations with the community were held on a continuous basis in the context of the activities of the Committee on Constitutional Reform. All the decolonization options had been discussed in those consultations.

Hearing of petitioners

42. **The Chairman** recalled that at the previous meeting the Special Committee had decided to hear petitioners on the item under consideration.

43. *At the invitation of the Chairman, Mr. Bossano (Leader of the Opposition, Gibraltar) took a place at the Committee table.*

44. **Mr. Bossano** (Leader of the Opposition, Gibraltar), by way of defining more accurately the "minor differences of approach" to the question of participation in negotiations with Spain, emphasized that the decolonization of Gibraltar was a matter exclusively for the people of Gibraltar and the administering Power; Spain had no right to interfere in the matter, especially on the basis of the "Brussels Process".

45. There had been two very important developments in 2002 regarding decolonization: the Caribbean Seminar in Anguilla and the referendum in Gibraltar.

46. Since the Special Committee on decolonization, having unanimously affirmed in 1964 that the Declaration on the Granting of Independence to Colonial Countries and Peoples was fully applicable to the territory of Gibraltar and having noted the differences between the United Kingdom and Spain regarding the status of that territory, had called on the two countries to enter into negotiations, Spain had until now been attempting to use that invitation to disavow the Special Committee's conclusion that the people of Gibraltar were in no way different from other colonial peoples.

47. Gibraltar had, for its part, always unequivocally expressed its firm commitment to the implementation of the measures of the First and Second International Decades for the Eradication of Colonialism and its readiness to cooperate with the Special Committee and the administering Power in preparing a programme of work on Gibraltar that would enable the people of Gibraltar to implement their right to self-determination

and give the Territory of Gibraltar an opportunity to acquire a new status that would meet the demands made by the United Nations for the removal of a Territory from the list of Non-Self-Governing Territories on the grounds that it had achieved the maximum possible level of self-government.

48. In resolution 56/74 of 10 December 2001, the General Assembly had requested the Special Committee to continue to seek suitable means for the implementation of the Declaration in all Territories that had not yet exercised their right to self-determination.

49. As he had said the previous year, the Parliament of Gibraltar unanimously supported the proposed draft Constitution, which, being somewhere between the option of free association and that of the fourth mode, was the route to self-determination for Gibraltar.

50. The Caribbean Seminar had demonstrated that the three traditional decolonization options were difficult to apply to the remaining 16 Territories. However, the fourth mode proposed in General Assembly resolution 2625 (XXV) of 24 October 1970, simply enabled specific decolonization formulas to be evolved and was the obvious route to the gradual removal of the remaining 16 colonies from the list. The fourth mode concept provided that any change in political status on the basis of the freely expressed will of the people constituted implementation of one form or another of that people's right to self-determination. In 1998 Spain had stated that the fourth mode option was open only to Territories with the right to self-determination, but not to Gibraltar, where the principle of territorial integrity applied. Where a conflict arose between the principle of territorial integrity and the right to self-determination it was when a separatist movement was operating in the territory of a State; that was not the case with any of the 16 Territories on the list.

51. After the United Kingdom had stated unequivocally at the Caribbean Seminar that it supported the proposal to send missions to the Territories under its administration, Gibraltar had sent the Special Committee an invitation to send a mission to the Territory. In its reply to that invitation the Special Committee had stated that such a visit had to be approved by the United Kingdom, which, for its part, had always said that it had received no such request from the Special Committee. For the people of Gibraltar, the Special Committee's position on that question would be a litmus test of the seriousness of its commitment to fulfilling its duty. A refusal to visit the Territory would mean that the Special Committee, like the United Kingdom and the European Union, was more concerned not to offend Spain.

52. Spain had stated at the Caribbean Seminar that the comprehensive agreement under discussion in the negotiations with the United Kingdom would enable the people of Gibraltar to achieve the maximum possible level of self-government. That agreement was based on the principle of the joint sovereignty of the United Kingdom and Spain over Gibraltar, even though 99 out of 100 people who had taken part in the referendum in Gibraltar had rejected that principle.

53. The political Opposition in Gibraltar had called on the United Kingdom to put an end to all discussions with Spain regarding the sovereignty and decolonization of Gibraltar, being fully aware of the possible consequences of such a step in view of the fact that the Government of Spain had unashamedly told the United Nations that attempts by Gibraltar to pursue self-determination would lead to a worsening of relations between Spain and Gibraltar. It was a sad reflection on the serious shortcomings of the Organization that Spain could make such statements with impunity and with not a single voice raised in protest.

54. Such a policy towards Gibraltar was a flagrant breach of General Assembly resolution 2625 (XXV), which stated that all peoples had the right freely to determine their political status without external interference and that every State had the duty to respect that right in accordance with the Charter.

55. The Special Committee had arrived at a moment of truth. Depending on how it behaved, the people of Gibraltar would be able to reach a conclusion as to how serious its commitment was to the decolonization of the Territory or whether it was constrained in carrying out its obligations towards the people of the Territory of Gibraltar for fear of upsetting Spain.

56. **Mr. Oyarzún** (Spain) said that he disagreed in principle with a number of the opinions expressed by the representatives of the Government and the Opposition of Gibraltar. He referred those present to the statement he had made earlier, which accurately reflected the point of view of the Government of Spain.

57. **Mr. Stanislaus** (Grenada) paid a tribute to the Chairman of the Special Committee on the organization of the Caribbean Regional Seminar in Anguilla, which

had brought new ideas into the discussion of the question of decolonization. He proposed that the Chairman should use all his diplomatic skill to bring the United Kingdom, Spain and Gibraltar together and finally resolve the very long-standing problem of that Territory.

58. Noting that, to judge from all accounts, the Government of Gibraltar and the Opposition held the same position, he asked for an explanation concerning the so-called fourth mode, of the existence of which he had become aware during the regional Seminar in Fiji.

59. **Mr. Bossano** (Leader of the Opposition, Gibraltar) said that in the annex to General Assembly resolution 2625 (XXV) it was stated that a colonial people could implement decolonization by choosing independence or free association or integration with an independent State, or through the emergence into any other political status freely determined by that people. For example, if the European Union were to grant Gibraltar a status under which it would have the maximum possible level of self-government, in other words the status of a territory within the framework of the European Union which would not be integrated with one of the 15 States members of the Union and would not be associated with one of those States, that status would fall outside the confines of the three specific and clearly defined decolonization options. The United Nations had precise criteria to enable it to determine whether a Territory had achieved independence, had integrated with another State or had entered into free association with another State. But since 1970 there had been a new possibility. That was the option enabling the Committee to say that the status that was suitable for Bermuda would not be suitable for Pitcairn. In other words, it might be said that within the fourth option there were potentially 16 separate options, since each of the 16 Territories on the list of Non-Self-Governing Territories had specific characteristics peculiar to it. However, such a decision developed exclusively for Gibraltar would by no means compel Spain to relinquish its claims and demands concerning the incorporation of Gibraltar into Spain. But it was always natural for man to hope, and it was important to make every effort to make clear the error of such an approach.

60. **Mr. Ovia** (Papua New Guinea) said that regional seminars were usually held in the Caribbean and sometimes in the Pacific region. The Committee might, however, consider holding them in other locations, for example in Gibraltar.

61. **Mr. Ortiz Gandarillas** (Bolivia) said that the members of the Special Committee were required under the United Nations mandate to ensure that progress was made in securing the self-determination of peoples. There was not much time left for completing the processes of self-determination for the 16 Non-Self-Governing Territories, and the Special Committee must therefore expedite its work. He requested clarification regarding three matters: the current situation concerning the constitutional development of Gibraltar; the current position of the Territory's relations with the United Kingdom and Spain; and the current status of the population of Gibraltar. In that connection, he would be interested to know whether the inhabitants of Gibraltar held British passports.

62. **Mr. Azopardi** (Government of Gibraltar) said that Gibraltar was a self-governing overseas Territory, like others in the Special Committee's purview. The inhabitants of the Territory were citizens of the British dependent Territories or British citizens. Gibraltarians were also citizens of the European Union, since Gibraltar had joined the European Union in 1973, having agreed on a number of exemptions from the Treaty. Relations between Gibraltar and the United Kingdom were those of constitutional partners. Gibraltar was a fully self-governing Territory in all spheres except foreign policy and defence. The Constitution of Gibraltar needed significant revision as it had been adopted before Gibraltar had joined the European Union. Some powers remained with the Government of the United Kingdom.

63. Relations with the United Kingdom were relatively good, although recently a certain tension had arisen because of the fact that Gibraltar's interests and aspirations differed from the policy being pursued by the United Kingdom. For many years Gibraltar had had its own Constitution, its own Parliament and self-governing status which it assiduously protected. Gibraltar had a unique and undoubtedly individual status and begged the Special Committee to ensure that that status was protected.

64. Relations with Spain could be better, but for that to be the case they must be based on mutual respect and trust. And there had to be an understanding of the rights and aspirations of the people of Gibraltar and of their right to self-determination, which was a legal reality. Mutual respect might be achieved by holding a meeting and discussing the issues which did not undermine the respective positions of Gibraltar and

Spain. Gibraltar had always been in favour of a genuine, constructive, sensible and creative process of dialogue with Spain. Gibraltar considered that more could be achieved in the way of mutual cooperation if questions of sovereignty, which caused deep differences, were set aside. People living on either side of the border would only stand to gain if better relations were established with the central Government of Spain. The Government of Gibraltar was ready to make efforts in that direction provided that that did not undermine the basic rights and aspirations of the Gibraltarian people.

65. As for constitutional development, he said that there were serious grounds for making amendments to the Constitution so as to reflect the fact that Gibraltar had joined the European Union and also the fact that it had acquired self-governing status 35 years earlier. For that purpose, a committee had been established which enjoyed the support of both the Government and the Opposition. That committee was drawing up a draft constitution based on a special decision under the fourth option. The draft had received the unanimous support of the House of Assembly, and the Government planned to submit it to the Government of the United Kingdom as Gibraltar's legal partner in negotiations on constitutional relations. In conclusion, he said that the Government of Gibraltar was ready to provide any details on the matter that might be required.

66. **Mr. Bossano** (Leader of the Opposition, Gibraltar), providing an additional reply to the question put by the representative of Bolivia, said that the current Constitution of Gibraltar was completely obsolete. It had been adopted in 1969, following the 1967 referendum, and conferred on the Governor theoretical powers which in practice did not exist. Essentially, successive Governments of Gibraltar had in practice reviewed the provisions of the Constitution and taken action to implement whatever policy they had been elected to carry out. At the 1995 meeting on decolonization organized in London by the dependent Territories, the administering Power had described the new approach to relations with the colonies as "a partnership of equals" and had spoken of how the time had passed when the Colonial Office had told the colonies what they had to do. It was only because the colonies did not now allow the colonial Powers to do as they used to that Gibraltar was able to run its own affairs without any interference. Even so, however, vigilance was needed since colonialism was still alive and was not yet finished.

67. As for relations with Spain, he noted that relations with the inhabitants of the Campo region were just as they had been before the border had been closed — the people had ties of friendship and kinship and the region's inhabitants went to work in Gibraltar.

68. Turning to the status of the population of Gibraltar, he said that Gibraltarians were citizens of the British Overseas Territories, and were previously considered citizens of Britain's dependent Territories. They had the right to British citizenship, but many of them did not take advantage of that right. In conclusion, he supported the holding of a seminar on decolonization in Gibraltar, since it would give the members of the Special Committee an opportunity to visit Gibraltar, to meet face to face with its inhabitants and to get first-hand information. The Gibraltarians regarded the Special Committee as their friend, their ally and the defender of their rights.

69. *Mr. Bossano withdrew.*

70. **The Chairman** suggested that the Special Committee should continue its consideration of the question of Gibraltar the following year, taking into account any directives the General Assembly might give at its fifty-eighth session. He also suggested that all relevant documentation should be transmitted to the General Assembly at that session so as to facilitate consideration of the agenda item in the Special Political and Decolonization Committee (Fourth Committee).

71. *It was so decided.*

72. **The Chairman** said that the Special Committee had concluded its consideration of the agenda item.

Questions of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, the Turks and Caicos Islands and the United States Virgin Islands (A/AC.109/2003/1, 2, 4, 5, 8, 9, 11-13, 15 and 16)

Hearing of representatives of Non-Self-Governing Territories

73. **The Chairman** informed the Committee that the Minister for Tourism, the Environment, Development and Commerce of the Cayman Islands was in New York. He suggested that, with the Committee's consent and in accordance with its usual procedures, the Minister should be invited to address the Committee.

74. *It was so decided.*

75. **The Chairman** drew the Special Committee's attention to the report that had been circulated concerning its visit to the Cayman Islands on 9 April 2003 at the invitation of the Chamber of Commerce of the Territory.

76. **Mr. Bush** (Government of the Cayman Islands) said that the Caribbean Regional Seminar held in Anguilla in May 2003 had been both useful and timely.

77. The Cayman Islands had a strong economy, and for a long time had provided for its own needs. Its colonial relations with the United Kingdom, which went back to the seventeenth century, were for the most part very good. However, in recent times significant differences had arisen between the Territory and the administering Power. The Government of the Territory did not consider that it had a mandate to seek independence for the Territory, but it did consider that it had a duty to defend the interests of the population. The Territory's Constitution had been in force since 1972 and since then there had been major changes in the Cayman Islands which required that it be amended. The Government had therefore approached the administering Power with a request that amendments should be made that would expand self-government in the Territory. There was nothing in that request that would run counter to existing precedents in the British colonies or to the United Kingdom's obligations towards the Cayman Islands.

78. Under Article 73 of the Charter of the United Nations, the administering Powers were obliged to assist Non-Self-Governing Territories in the development of their political institutions. It was hard to reconcile with that a situation in which the United Kingdom presented the issue as if there was only one alternative to preserving the status quo, and that was independence. It followed from the same Article of the Charter that administering Powers were obliged to ensure the economic advancement of a Territory even if the economic interests of those Powers were better served by keeping such advancement in check. While the economy of the Cayman Islands was being treated as a pawn, the talk was of protecting the Eurobond market in the United Kingdom, in particular, and strengthening financial markets in the European Union as a whole.

79. The same Article 73 of the Charter spoke of the educational advancement of the Non-Self-Governing Territories. In fact, the administering Power kept the population in ignorance regarding the full range of options available to it in the plan for constitutional development and the expansion of self-government, and regarding the consequences of choosing one or other of those options. The following circumstance was also linked to the educational aspect. The judicial system in the Cayman Islands was built on the British model. According to that model, the person advising the Government on questions relating to the Constitution and State administration was the Attorney-General. But the Attorney-General appointed by the United Kingdom in the Cayman Islands always had the function of a prosecutor rather than that of an expert on constitutional questions.

80. In December 2002 he had been on a visit to London at the head of a delegation comprising representatives of the Government, the Opposition and non-governmental organizations. A meeting had been held on constitutional reform. At the meeting he had explained to the British side that the Cayman Islanders regarded the administering Power as a partner and understood the issues that were of concern to it, for example the question of the impartiality of the civil service and that of the independence of the judicial system. At the same time the administering Power had to understand that responsible government had been practised in the Territory ever since 1831. The amendments now being proposed by the Cayman Islanders were aimed at increasing accountability and transparency.

81. In London he had also explained that the ruling and opposition parties had managed to bring their positions closer together on the issue of the Constitution and that the only major unresolved element was the question of the time periods for reform of the Constitution. The Opposition wanted to wait until the next general election, while the ruling party considered that amendments to the Constitution should be introduced as soon as possible. Legislative practice and conditions in the Cayman Islands had far outstripped the Territory's existing constitutional order, which had become outdated. At the same time, the entry into force of the bill containing the laws the British side was insisting should be included in the Constitution would take some time. The Government of the Territory considered that, for that, certain legislative acts would first have to be updated, for example those concerning the regularization of elections and the prison system.

82. At the London meeting, the question of a referendum had been raised by a representative of one

of the non-governmental organizations. In the view of the Government of the Cayman Islands, a referendum was no panacea, and had to be used to resolve such key issues as the choice for or against independence and the question of amendments to the Constitution that were unrelated to those issues.

83. Following the London meeting, the Government of the United Kingdom had sent the Cayman Islands a draft Constitution which was essentially a template used by the administering Power for its remaining Overseas Territories. At the meeting the Cayman Islands delegation had been under the impression that the choice was between a ministerial form of government and independence. Now it was clear that there could be more options. The United Kingdom should go back to the draft Constitution and ensure that it reflected the special nature and aspirations of the Territory, particularly in terms of strengthening its financial sovereignty. Why was it impossible for the Cayman Islands to be given the same constitutional structure as Bermuda, especially as the two Territories had similar economies? Why could not all the United Kingdom Overseas Territories, without exception, have such a constitutional structure?

84. Matters were made worse by the fact that, departing from the position it had previously held, the United Kingdom was now saying that it was impossible for a new Constitution to enter into force before the next elections, planned for November 2004. The question arose as to whether that statement was linked to the recent departure from office of the Territory's Attorney-General, who had been appointed by the United Kingdom. He had been relieved of his office following the revelation of violations of the law on the part of British agents engaged in obtaining financial information at the time of the trial of the Eurobank case. The Cayman Islands had consented and was, as always, ready to assist in combating money-laundering, terrorism and other criminal activities. The regulatory regime operating in the Territory was far stricter than the regimes operating in European countries or in the United States of America. But the Cayman Islands allowed no one to violate legal procedures.

85. The Cayman Islands had an inalienable right to economic stability. Since sugar cane was not grown there and there were no other businesses of interest to the colonial Powers, the manifestations of colonialism in the Islands were muted. The Territory could now boast of the fact that it belonged to the list of active international business centres. And real colonialism was appearing now that the United Kingdom was seeking to put an end to the Territory's acquired status in order to satisfy its own interests.

86. The people of the Cayman Islands did not wish to abandon the long-standing ties linking them with the United Kingdom. They did not want independence, but rather access to all the available options, and at least to that enjoyed by Bermuda. The United Kingdom must recognize that securing peace, order and proper administration in the Territory was not the same as internal oversight on its part, especially the kind of oversight that undermined the financial independence of the Cayman Islands from the British Treasury.

87. **Mr. Requeijo Gual** (Cuba) said that the visit made to the Cayman Islands in April by the Chairman of the Special Committee was of great importance. He proposed that the Territory's electoral bodies should continue to work with the Special Committee and that a representative of the Territory should attend the meeting of the Fourth Committee at the fifty-eighth session of the General Assembly.

88. **Mr. Pisa** (United Kingdom) said that many of the questions touched on by the representative of the Cayman Islands had already been looked into by the United Kingdom at the Caribbean Regional Seminar. The United Kingdom was now undertaking a review of the constitutions of all its Overseas Territories. A high-ranking representative of the British Foreign and Commonwealth Office was visiting the Caribbean territories, and on 11 June he would be paying a visit to the Cayman Islands.

89. **Mr. Ovia** (Papua New Guinea) said he was optimistic that in the near future the question of the Territory's self-determination would be settled in a friendly manner.

90. **Mr. Ortiz Gandarillas** (Bolivia) wondered whether the Cayman Islanders were sufficiently well informed and knowledgeable about the matters under discussion to take a decision on the question of self-determination. Self-determination did not necessarily mean independence or any other single option.

91. He welcomed the readiness expressed by the administering Power to send a representative to the Territory to discuss current problems. Cooperation of that kind was always welcomed by the Special Committee.

92. **Mr. Bush** (Government of the Cayman Islands) said that it was really essential that the Cayman Islanders should be informed about the issues of self-determination, and that it would probably be worth considering what help could be given to the Cayman Islands in that regard.

93. As for the visit by the representative of the British Foreign and Commonwealth Office, he would be in the Cayman Islands chiefly to draw up the programme for the visit which the Chief Secretary of the Territory would be making to the United Kingdom in the second half of the year. There was no point in expecting that the question of the financial sovereignty of the Cayman Islands would be resolved during either of those visits. Pressure was being exerted on the British Overseas Territories in the Caribbean for them to agree to what the United Kingdom was getting out of them.

94. **Mr. Pisa** (United Kingdom) replied in the affirmative to the question put by **Ms. Mulamula** (United Republic of Tanzania) and the **Chairman** as to whether there was an opportunity to send a United Nations mission to the Cayman Islands or to hold one of the next regional seminars there.

95. **Mr. Ovia** (Papua New Guinea) expressed the hope that during the United Kingdom representative's visit to the Territory on 11 June all current issues would be brought up for discussion.

The meeting rose at 1 p.m.